

CITY OF MUSKEGON  
ZONING BOARD OF APPEALS  
REGULAR MEETING  
MINUTES

June 10, 2003

Chairman S. Schiller called the meeting to order at 4:00 p.m., and roll was taken.

MEMBERS PRESENT: C. Kufta, S. Schiller, R. Hilt, R. Schweifler, J. Clingman-Scott

MEMBERS ABSENT: D. Newsome

STAFF PRESENT: D. Steenhagen, H. Griffith

OTHERS PRESENT: C. Holt, 160 John Ave.; F. Steward, 3575 S. Sweet Lake Dr.; L. Page, 3328 Wilcox; K. Anderson, 4716 Sunny Ridge; M. Brown, 2559 Harding.

APPROVAL OF MINUTES

A motion that the regular meeting minutes of May 13, 2003 be approved, was made by R. Hilt, supported by R. Schweifler and unanimously approved.

J. Clingman-Scott arrived at 4:02 p.m.

PUBLIC HEARINGS

Hearing, Case 2003-10: Use Variance request to allow 955 W. Laketon Ave. to be rented as a 2-unit apartment building in the B-4, General Business, zoning district, by Michael and Caterina Holt. D. Steenhagen presented the staff report. This case is the result of an enforcement action. The Housing Inspector brought the situation to staff's attention. The entire south side of Laketon Ave., from Seaway Dr. to Barclay St. is zoned B-4, including the subject property. From the subject property eastward on this side of Laketon is almost entirely commercial, with only one other residential property. The property was historically a legal nonconforming two-unit apartment building, with the first floor being owner-occupied by Edward Mikos. However, since at least 1996 the upper apartment had been vacant. The previous property owner had participated in the City's paint program in 1996, which allows financial assistance for paint only for single-family homes. In order to qualify for the program, the homeowner agreed not to rent out the upper apartment, and signed agreements to that effect in 1996, 1997 and 2000. Mr. Mikos has since passed away and the property has been sold. The Housing Inspector became aware that the new owners are renting out both units and alerted staff to the situation. Staff wrote an enforcement letter to the current owners apprising them of the situation and explaining that the upper apartment has lost its nonconforming status since it had been vacant for more than 2 years. The current owners had three choices, either to cease renting out the upper apartment and leaving the property as an existing non-conforming single-family building, to apply for a use

variance to allow a 2-unit apartment building in the B-4 district, or to apply to have the property rezoned to a district which would allow a 2-unit apartment building. The owners have since made this use variance request. The Housing Inspector conducted an inspection of the property in May. There were several code violations found in both apartment units. If the use variance is approved, the property will still be required to have a Certificate of Compliance from the Inspections Department before the upper unit can legally be rented out. The zoning ordinance requires that all residential uses have 2 paved, off-street parking spaces per unit. If the use variance is approved and this property is used as a 2-unit, there would have to be four paved spaces provided. There is a paved driveway on the property and also a second access off of the alley, which is graveled, and leads to a graveled area behind the home, which appears to also be used for parking. Any parking area for the property needs to be paved. Staff has received a phone call from Bob Ferris, speaking for his mother Josephine who lives in the area. He was not sure which property would be affected but is opposed to the request because there are too many drifters in the area now and rental properties are not being kept up. Staff has also received a voice mail from Steve Gawron who is opposed to the request unless they are looking at all the zoning along Laketon Ave.

R. Hilt asked how long the home had to be single family in order to participate in the paint program. D. Steenhagen stated that the program required it be single-family at the time of the service. J. Clingman-Scott asked about the agreement not to rent. D. Steenhagen stated that the agreement was with the inspections department. R. Hilt asked when the property lost its non-conforming status after 2 years of not being used, and once the property is sold, were the new owners notified. D. Steenhagen stated that the purchaser should have been informed of this by the previous owner or the realtor. C. Holt provided members with pictures of the home and a type written response to staff's concerns and answers to the findings of fact. She stated that they are responsible landlords. When an inspection is performed, the repairs that need to be made are completed before the next visit. She has already made some of the requested repairs that the Inspections Department had listed from their visit this year. R. Schweifler asked how many entrances there were to the upstairs apartment. C. Holt stated that there is a common area at the rear for both apartments that contains a door to each of the apartments plus a door in front to the lower unit. C. Kufta asked why the applicant wasn't trying to utilize the lower apartment for commercial use, such as a realtor's office. C. Holt stated that there wouldn't be enough parking in the rear of the property that a business would require. C. Kufta asked how many parking spaces she thought there were on the property. C. Holt stated that there was about 4 spaces with an allowance for maneuvering. One of them may be parking on the grass a little. The way the property is set up is that you would pull in the driveway from the street and park in the back. You could leave the property by continuing to drive to the alley. R. Hilt asked if she was informed by the realtor or owner that the property had lost its non-conforming status. C. Holt stated that she wasn't informed of this. The realtor knew her intention was for this to be a 2 unit rental property. R. Hilt asked if she had spoken to the realtor since she found this out. C. Holt stated that she has. They found out the plumbing was faulty and the realtor told her that the property was sold "as is". The owner had passed away and his 4 children were the ones selling the property. R. Hilt stated that he felt the ordinance wasn't the problem. The fact that the applicant wasn't notified that the property had lost its non-conforming status is the problem. C. Kufta asked what the square footage of the home was. C. Holt stated that the main floor was just over 1,000 sq. ft. The upper apartment was about the same or just under that.

A motion to close the public hearing was made by R. Schweifler, supported by R. Hilt and unanimously approved.

C. Kufta stated that he couldn't get past the fact that this is in a commercial zoning and he felt that it wasn't proven that it couldn't be a commercial use. D. Steenhagen stated that B-4 is the most intensive use and almost any commercial use would be allowed there. C. Kufta asked how many parking spaces would be required for a commercial/retail space. D. Steenhagen stated that it would probably be 1 space per 300 or 400 sq. ft. of useable space depending on the use. R. Schweifler stated that the ordinance would allow for the lower apartment to be rented to a commercial use and residential for the upper apartment. He felt the ordinance is the problem and the building probably outdates the ordinance. He feels this is an appropriate use for the area and would support this variance. J. Clingman-Scott asked how the surrounding properties were zoned, such as on Dowd St. D. Steenhagen stated that it is zoned single family. C. Kufta stated that they would also need to look at what is compatible with the over all area since there is single family behind it. He has a couple of issues. The first is whether a multi-family residential would be compatible with the area. The second is whether this could be utilized with commercial located in the lower with residential in the upper. D. Steenhagen stated that in general, staff considers busier streets to be more compatible with multi-family residential. R. Hilt stated that the plight is that the applicant probably wouldn't have purchased the property if they knew the property couldn't be used as a two family residential. He felt it was the realtor's responsibility to know this. R. Schweifler agreed. There would need to be some extensive rehabbing to make this compliant with ADA codes to make this into a commercial use building. He felt the house lends itself to be a 2-unit home. C. Kufta stated that he is sympathetic with the plight of the applicant. When looking at the findings of fact, he doesn't feel that it was proven that this couldn't be used for commercial. J. Clingman-Scott stated that it could be made into commercial, but it would be costly. It would be easier to convert it to a single-family dwelling. Her preference would be to have it a single family home. R. Hilt stated that he is concerned with the number of exits for each apartment. D. Steenhagen stated that if there had been a problem, the Inspections Department would have probably noted it in their inspection report. C. Kufta stated that he felt it wasn't proven that this couldn't be used for commercial. R. Schweifler asked what the uses are for a B-4 zoning. S. Schiller read them to the commission members. R. Schweifler stated that he couldn't see this property being used for the uses that were read. C. Kufta added that B-2 zoning uses could also be allowed. He read them to the commission members. R. Schweifler asked what the parking requirements would be for the uses. D. Steenhagen stated that it would depend on the use. She gave some examples. R. Schweifler felt they should look at what is allowable and use reasonable judgement. It would be hard to use this home for the allowable uses under the zoning.

A motion that to deny the request because no proof was provided that the property at 955 W. Laketon Ave. couldn't be put to a reasonable use allowed in the B-4 zoning district was made by C. Kufta, supported by R. Hilt with discussion continuing on the motion.

R. Schweifler suggested that it may be more appropriate to table this and allow for the owner to prove that this couldn't be put to a reasonable use permitted in the zoning district instead of making the owner wait a year to try to get a variance then.

A motion to table the request was made by R. Schweifler, supported by J. Clingman-Scott and approved with S. Schiller voting nay.

Hearing: Case 2003-11: Variance request to reduce the rear setback requirement to 13 feet for a breezeway addition at 3696 Watson St., by Tom Gabris. D. Steenhagen presented the staff report. The property contains an existing home and an existing detached garage. The property owner would like to connect the two by adding a breezeway. The home also has a single-stall-attached garage as well. The existing garage is located 6 feet from the side property line and 13 feet from the rear property line. This is conforming for a detached garage. There are only about 4 feet separating the eaves of the garage and the house, which is nonconforming since the ordinance requires a 6-foot separation between the eaves. The property owner is disabled and would like the garage to be attached to improve his quality of life. If the garage were attached with a breezeway as proposed, the side setback would still be conforming, but the rear setback would not, since by attaching the garage it becomes part of the house, which requires a 30-foot rear setback. Staff has received 2 e-mails on this case, in support of the variance, which were provided to the commission members. Staff has received two phone calls, from Jane Matty, 1412 Nelson, and from Kimberly Nash (lives behind subject property), both in support of the variance.

F. Steward stated that he was there on behalf of the owner. He would also be the one building the breezeway if this is approved. J. Clingman-Scott asked if he knew how old the garage was. F. Steward stated that it was about 15 years old.

A motion to close the public hearing was made by R. Hilt, supported by C. Kufta and unanimously approved.

J. Clingman-Scott stated that she doesn't feel this would affect the neighborhood and would give the owners enjoyment of their house.

The following findings of fact were incorporated by reference of the applicant's submittal: There are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district because this is an old neighborhood and the property is not unique. The 30 ft. setback did not apply when the garage was built. Such a dimensional variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity because they are able to do this if they needed to. The authorizing of such dimensional variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of this chapter or the public interest because the structures already exist and adding the breezeway will join the garage to the house only. The structures are less than 4 ft. from the eaves. The alleged difficulty is caused by the Ordinance and has not been created by any person presently having an interest in the property, or by any previous owner because of the 30 ft. setback at the rear property line. The alleged difficulty is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner because they would like a covered shelter from the house to the garage. Steve Gabris is on crutches and will be for the rest of his life. He lives in

the home. The requested variance is the minimum action required to eliminate the difficulty because this would allow the applicant better use of his property.

A motion that the findings of fact determined by the Zoning Board of Appeals be adopted and that the variance to reduce the rear setback to 13 feet for a breezeway addition at 3696 Watson Ave., be approved, based on the findings of fact with the following conditions: 1) The variance is recorded with the deed to keep record of it in the future. 2) That the addition to the property must be complete within one year or the variance is void was made by J. Clingman-Scott, supported by R. Schweifler and unanimously approved.

Hearing; Case 2003-12: Variance request to allow a shed to be constructed in front of the front building line at 3305 Thompson Ave., by Larry Page. D. Steenhagen presented the staff report. This case is the result of an enforcement action. The Zoning Inspector had put a “Stop Work” order on the property when he discovered the shed being constructed. The property contains a home, which is set back over 70 feet from the road. The property is located along the edge of a dune, and the area directly behind the house contains a steep slope. The property owners have constructed an 8’ x 10’ shed in front of the home. Many of the homes in this area are located closer to the road, however there are others (including the subject property) which were built quite a distance back away from the road, butting up against the existing slope. There is no room on the sides of the house to construct a shed since the house is built only a few feet away from the property line on either side – in fact both side setbacks are nonconforming as they are both below the minimum of 6 feet. Staff has not received any phone calls or letters on this case.

S. Schiller asked about the historical parking in the front yard. D. Steenhagen stated that she has spoken with the Zoning Inspector and he said this has been done ever since he could remember. L. Page stated that he had started to build the shed without a permit. He didn’t know that he needed one. Once he applied for the permit, he found out the placement of the shed was the biggest issue. He added that the shed is 8’ x 12’. He provided the commission members with written statements from his neighbors in favor of the request. He also provided the commission members with pictures of the shed. R. Hilt asked if he intended to move into the home himself. L. Page stated that he would not be moving there. He purchased this home as a guest home and uses it for that purpose. The shed would be used to store gardening and other equipment since there is no other storage area on the property.

A motion to close the public hearing was made by R. Schweifler, supported by J. Clingman-Scott and unanimously approved.

C. Kufta felt that the applicant had done everything in good faith. He wouldn’t want a neighbor to have a shed in the front yard. J. Clingman-Scott stated that she would feel the same, except for the neighborhood this is in. The neighborhood is an unusual neighborhood.

The following findings of fact were incorporated by reference of the applicant’s submittal: There are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district because the back yard is all steep dune. Such dimensional variance is necessary for the preservation and enjoyment of a substantial property right possessed

by other properties in the same zoning district and in the vicinity because the house is very small with very limited storage. The authorizing of such dimensional variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of this chapter or the public interest because the building is substantially and attractively build and sets back from the street and is attractively painted to match the house. The alleged difficulty is caused by the Ordinance and has not been created by any person presently having an interest in the property, or by any previous owner because the previous owner stored everything in the house. It took 3 dumpsters to clear out a 550 sq. ft. house after she had moved all her things out. The alleged difficulty is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner because it is a reasonable convenience for the use of the property. The requested variance is the minimum action required to eliminate the difficulty for the enjoyment of the property.

A motion that the findings of fact determined by the Zoning Board of Appeals be adopted and that the variance to allow a shed in front of the front building line at 3305 Thompson Ave. be approved, based on the findings of fact with the following condition: The variance is recorded with the deed to keep record of it in the future, was made by R. Schweifler, supported by J. Clingman-Scott and unanimously approved.

The meeting was relocated to Conference room 106 at 5:13 p.m.

S. Schiller left at 5:15 p.m.

Hearing: Case 2003-13: Variance request to allow a garage to be constructed in front of the front building line on a corner lot at 2559 Harding, by Anderson Builders. D. Steenhagen presented the staff report. The subject property is a corner lot, fronting both Harding Ave. and Fountain St. A corner lot is defined as having two frontages, and therefore, for zoning purposes, two front setbacks/yards. The property currently contains a home and an existing small garage. The home is located on one side of the property, with a large yard area fronting Fountain St. The garage is behind the front building line of the side of the house facing Harding Ave., but is in front of the front building line of the side of the house facing Fountain St. The property owner would like to replace the existing garage with a new one. The proposed new garage would be built closer to the alley and would take drive access off of Fountain St. instead of Harding Ave. As with the current (nonconforming) garage, it would be behind the front building line of the side of the house facing Harding Ave., but would be in front of the front building line of the side of the house facing Fountain St. The garage would also be closer to Fountain St. than the existing garage is. The proposed garage meets setback requirements for a detached structure, with a 3-foot setback off of the alley and a 20-foot setback from Fountain St. For comparison purposes, the front setback requirement for a principal structure (house) would be 15 feet. Therefore the proposed garage would be set back further from Fountain St. than a house would be required to be. The applicant has stated that if the variance is approved and the garage constructed as proposed the existing garage would be torn down once the new garage has been built and the existing driveway would be demolished. The existing curb cut on Harding Ave. should also be closed. Staff has received two phone calls on this case. The first caller had some questions about which property is involved, but did not leave a name or address or state an opinion. The

second caller gave no name or address but stated that she is for the variance because this would help improve the neighborhood.

K. Anderson stated that the driveway, current curb cut, and current garage would be eliminated. The new garage would have two stalls with a workshop in the back. J. Clingman-Scott asked if there was a restriction to the size a garage could be. D. Steenhagen stated that the only restriction would be that the property couldn't be covered more than 50% with structures.

A motion to close the public hearing was made by R. Schweifler, supported by C. Kufta and unanimously approved.

J. Clingman-Scott stated that she saw no problem with approving this request.

The following findings of fact were incorporated by reference of the applicant's submittal: There are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district because the property is larger than most in the neighborhood at it is a corner lot. Such dimensional variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity because neighbors are capable of building their garages where they are supposed to go. The authorizing of such dimensional variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of this chapter or the public interest because the house is back on the lot and has a small brick garage in the immediate front. The alleged difficulty is caused by the Ordinance and has not been created by any person presently having an interest in the property, or by any previous owner because the house was placed farther back on the lot and the new garage would be behind the house more than the current garage is. The alleged difficulty is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner because he would not gain financially by doing this since there will be an expense to build and demolish. He would only gain in the fact he will be able to park both his vehicles in the new garage and he will have more yard for his children to plan. The requested variance is the minimum action required to eliminate the difficulty because he is on a corner lot which causes more rules for him to follow.

A motion that the findings of fact determined by the Zoning Board of Appeals be adopted and that the variance to allow a garage in front of the front building line on a corner lot at 2559 Harding Ave., be approved, based on the findings of fact with the following conditions: 1) The variance is recorded with the deed to keep record of it in the future. 2) That the addition to the property must be complete within one year or the variance is void. 3) The existing curb cut off of Harding Ave. must be closed. 4) The existing garage will be removed. 5) The aesthetics of the new garage will match the home, was made by J. Clingman-Scott, supported by R. Schweifler and unanimously approved.

R. Schweifler left at 5:22 p.m.

## OTHER

Update on Replacement for ZBA – D. Steenhagen stated that the City Commission would be voting on a new member for the ZBA tonight. His name is Ernest Fordham.

Meeting Date – D. Steenhagen showed the commission members a copy of the City calendar showing the different meetings. She suggested the first or third Thursday of the month as a possible date to change the meeting. The reason for these dates was because either the Commission Chambers were already in use or Hope would not be able to attend the meeting if it were on another Tuesday. The commission members concurred that they would like to keep it as it currently is since they don't normally have long agendas requiring the meeting to be relocated after 5:15 p.m..

There being no further business, the meeting was adjourned at 5:30 p.m.

hmg  
6/10/03